

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

60874

FILE: B-185689

DATE: May 13, 1976

MATTER OF: Syro Steel Company

98948

DIGEST:

Where contractor, alleging error in bid after award of which contracting officer had constructive notice (bid was 91 percent higher than Government estimate; second low bid was 30 percent higher and other two bids were only approximately 7 percent apart), fails to prove intended bid (prebid opening worksheet reflected only cost and postaward computation was recalculation of bid price), payment may be made on quantum valebant basis as contract has been completed.

The Department of Transportation, Federal Railroad Administration has submitted for our decision the Syro Steel Company (Syro) request for reformation of contract No. 69-25-0003-4403 because of a mistake in bid alleged after award. The contract, awarded by The Alaska Railroad, was for "300 linear feet (l.f.) of 210 pi 8 gauge structural steel multi-plate arch, related hardware and seam sealant."

The following is a list of all bids received:

<u>Bidder</u>	<u>Per linear foot</u>	<u>Total bid</u>
Republic Steel Company	\$168.96	\$50,685.00
Armco Steel Corporation	157.00	47,100.00
Syro Steel Company	120.50	36,150.00

When notified of the award, Syro advised the contracting officer that, due to a mistake, the unit price should have been approximately \$17 per l.f. more. The contracting officer believes that an error in bid was made. We concur. In this regard, Syro submitted a pre-bid opening worksheet reflecting a figure of \$143.24 per l.f. as opposed to the \$120.50 per l.f. bid.

Where a bid has been accepted, the bidder is bound to perform and must bear the consequences of its unilateral mistake unless the contracting officer was on actual or constructive notice of the possibility of error prior to award and fails to seek verification. Ubique Ltd., B-180610, August 12, 1974, 74-2 CPD 90. In determining whether a contracting officer has a duty to verify bid prices, the Court of Claims stated in Chernick v. United States, 372 F.2d 492, 496 (Ct. Cl. 1967):

"* * * The test of what an official in charge of accepting bids 'should' have known must be that of reasonableness, i.e., whether under the facts and circumstances of the case there were any factors which reasonably should have raised the presumption of error in the mind of the contracting officer, * * *"

Based on the following, we believe that the contracting officer was on constructive notice of the possibility of error and should have, but did not, request verification. The record before this Office indicates that the Government estimate of \$69,000 was 91 percent higher than Syro's bid of \$36,150. The second low bid was approximately 30 percent greater than Syro's bid, while the two bids other than Syro's were only approximately 7 percent apart. However, to permit reformation due to an error in bid alleged after award, the contractor, in addition to establishing the error of which the contracting officer has constructive notice, must also submit documentary evidence of the bid actually intended. International Harvester Company, B-183424, April 30, 1975, 75-1 CPD 272.

In this regard, Syro submitted data after award indicating that its costs (without overhead or costs of special engineering) are \$139.27 per l.f. According to Syro the minimum markup on this type of sale is 15 percent on material, or \$14.66 per l.f., thereby arriving at a "quote price" of \$155.93 per l.f. However, the prebid opening worksheet reflecting a figure of \$143.24, which Syro stated it is willing to accept as payment, is characterized by the firm after award as

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including only its costs. Syro has not shown the intended bid price from original work papers but rather has submitted a recalculation of what would have been the intended bid price. Therefore, reformation may not be permitted.

Since rescission is no longer feasible as the contract has been completed, we believe that payment may be made to Syro on a quantum valebant basis--that is, the reasonable value of the goods actually furnished. See International Harvester Company, supra.

Deputy

Rykman
Comptroller General
of the United States